

# **EXHIBIT 10**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

vs. )

WAL-MART STORES EAST, LP, )

Defendant. )

Civil Action No: 2:17-cv-70

Deposition of

JULIA A. STERN

Tuesday, September 4, 2018

9:07 a.m.

at

U.S. Equal Employment Opportunity Commission

310 West Wisconsin Avenue

Milwaukee, Wisconsin

Reported by Faye M. Talatzko, RPR

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1	A	No.	1		office.
2	Q	Do you know -- Do you have any knowledge of who may	2	Q	And this was July 10, 2015?
3		have prompted Bonnie Popp to fill out a scheduling	3	A	Yes.
4		availability form for Marlo Spaeth on February 16,	4	Q	And who are all the people who were in the management
5		2015?	5		office during this meeting on July 10, 2015?
6	A	No.	6	A	Marlo, myself, and Robin Castro.
7	Q	Did you terminate Marlo Spaeth?	7	Q	And what is the title of Robin Castro's position?
8	A	Yes.	8	A	She was a shift manager. Co-manager.
9	Q	And when was that?	9	Q	I'm sorry. Shift manager?
10	A	On July 10th, I believe. 2015.	10	A	They interchange. The company goes back and forth
11	Q	I'm sorry?	11		between shift manager and co-manager, so it is the
12	A	2015.	12		same position.
13	Q	July 10, 2015. Why did you terminate Marlo Spaeth?	13	Q	At the time was her title co-manager?
14	A	Because of her attendance.	14	A	I -- Yes, I guess.
15	Q	What was wrong with the attendance of Marlo Spaeth?	15	Q	And in effect, Robin Castro was above you but below
16	A	She was not working her entire shifts or at all.	16		the store manager; is that correct? In the chain of
17	Q	When you say "or at all," what do you mean?	17		command.
18	A	She had a couple of days where she did not come into	18	A	Yes.
19		work at all, nor did she call in.	19	Q	Did Marlo Spaeth have any advance notice that you
20	Q	And prior to termination, how many coachings did	20		would want to meet with her before the actual meeting
21		Marlo Spaeth receive?	21		on July 10, 2015?
22	A	Two.	22	A	No.
23	Q	And are both of those coachings represented in	23	Q	Is it also true that nobody in the -- none of the
24		Exhibit 20?	24		family members of Marlo Spaeth had any advance notice
25	A	Yes.	25		of the July 10th, 2015 meeting?
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1	Q	Is it your testimony that an employee -- Let me	1	A	True.
2		rephrase.	2	Q	Did the meeting occur during Marlo's scheduled shift?
3		Is it your testimony that Marlo Spaeth	3	A	Yes.
4		could have been terminated at the time of her second	4	Q	And how did Marlo first become aware that you wanted
5		coaching, March 18, 2015?	5		to meet with her?
6	A	She would not have been terminated because she	6	A	I called her into the office.
7		received the coaching.	7	Q	On a telephone?
8	Q	Did she need two coachings plus additional violations	8	A	No.
9		of the attendance policy in order to be eligible for	9	Q	Did you go out --
10		termination?	10	A	Went out and got her, and brought her back to the
11	A	Yes.	11		office.
12	Q	And so at the time of March 18, 2015, there was	12	Q	Okay. And tell me everything you remember about what
13		not -- there had not been enough discipline of Marlo	13		was said at that meeting.
14		Spaeth at that point to make her eligible for	14	A	We told her that we were terminating her employment
15		termination; is that correct?	15		because of the excessive absence occurrences.
16		Do you understand the question?	16	Q	When you say "we," did you say that or did Robin
17	A	That's why she had the second coaching.	17		Castro say that?
18	Q	On March -- That's why she had the second coaching on	18	A	Both Robin and I were talking.
19		March 18, 2015; is that correct?	19	Q	Did you have any papers that you showed Marlo Spaeth?
20	A	Yes.	20	A	We would have had her attendance tracking.
21	Q	And when you terminated Marlo Spaeth, did you have a	21	Q	Any other papers?
22		meeting with her?	22	A	No. Just her attendance tracking.
23	A	Yes.	23	Q	Is there anything else you recall about the meeting?
24	Q	Where were you?	24	A	And that she was upset. She cried.
25	A	In the invoice office -- or, in the management	25	Q	What else do you remember?

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1	A It took a while for her to leave. You know, she just	1	A Her sister called that night.
2	sat in the chair and cried.	2	Q And would that be her sister Amy Stevenson? Does
3	Q What did she say?	3	that sound correct?
4	A I don't recall.	4	A Yes.
5	Q Did she understand the word "terminated," in your	5	Q And when you say "that night," around what time do
6	opinion?	6	you think it was?
7	A Well, yeah, we told her that she wasn't going to be	7	A I don't know. I don't know. I don't remember
8	working with us anymore, that we were ending her	8	what -- I don't remember what time it was. It was
9	employment. She understood that.	9	after Marlo left.
10	Q Is Marlo Spaeth disabled?	10	Q "After Marlo left." And was it still your shift? Do
11	MR. BULIOX: Objection as to the	11	you think you were still clocked in?
12	definition of "disabled."	12	A Yes.
13	But subject to that, go ahead and answer.	13	Q And did you answer the phone?
14	You know, actually the objection goes a	14	A Yes.
15	little bit further, to the extent that Ms. Stern is	15	Q Okay. What did Ms. Stevenson say to you in this
16	not a medical professional.	16	phone call?
17	Subject to those objections, answer, if	17	A She called twice. The first time she called and
18	you can.	18	asked if she could speak to someone about getting
19	BY MS. VANCE:	19	Marlo's job back.
20	Q Let me rephrase. Does Marlo Spaeth have a	20	And I told her I would give her the store
21	disability?	21	manager -- give him her phone number, and he would
22	MR. BULIOX: Same objection.	22	contact her.
23	A I know she had Down Syndrome, just from working with	23	Q And did you? Or did you have -- I'm sorry. When you
24	her.	24	said I would give her the phone number, did you in
25	BY MS. VANCE:	25	fact give Ms. Stevenson the phone number of the store
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1	Q And had you known that she had Down's Syndrome the	1	manager?
2	entire time that you had worked with her?	2	A No. I told her I would give the store manager her
3	A Yes.	3	phone number.
4	Q Did you give Marlo Spaeth any paperwork as part of	4	Q I see.
5	this termination meeting?	5	A And he would contact her when he was in.
6	A Yeah, they get like -- For insurance and stuff, they	6	Q And did you do that?
7	get a copy of all the phone numbers they can call if	7	A He wasn't in. I gave him -- I sent him the email,
8	they have any...	8	giving him the phone number.
9	Q Any what?	9	Q So you sent an email to -- Now, at that time was it
10	A Any insurance or, you know, 401s or any of that kind	10	Jason or Kent?
11	of stuff, profit sharing. There's different numbers	11	A That was Kent.
12	on that piece of paper they can call.	12	Q That was to Kent. You sent Kent an email with Amy
13	Q Do you remember giving Marlo Spaeth that paperwork?	13	Stevenson's phone number on it; is that correct?
14	A I don't remember. I'm sure we did, because we do for	14	A Yes.
15	everyone.	15	Q Do you think it was that day? That very day,
16	Q Do you have any knowledge of whether or not Marlo	16	July 10, 2015?
17	Spaeth called Wal-Mart after July 10, 2015, to ask	17	A I believe so.
18	about her schedule for work?	18	Q Was there anything else spoken in that first
19	A No.	19	conversation with Amy Jo Stevenson?
20	Q Do you have any knowledge of whether or not Marlo	20	A Not that I recall. She just wanted to talk to
21	Spaeth returned to Wal-Mart to work after July 10,	21	someone.
22	2015?	22	Q Did Amy Stevenson have any way of knowing that you
23	A No.	23	personally had been in the meeting where Marlo was
24	Q After the July 10, 2015 meeting, did you have any	24	terminated?
25	contact with any family member of Marlo Spaeth?	25	MR. BULIOX: Objection. Calls for

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1	A No.	1	Q In Exhibit 24, halfway down that first paragraph I'm
2	Q Have you ever had a computer-based learning module	2	reading. "Marlo was aware that she was to work her
3	that trained you on assisting employees who request a	3	full shifts which are always 1 to 5:30, and Karen
4	reasonable accommodation, and finding the proper	4	would print out her schedules for her."
5	paperwork at Wal-Mart?	5	Is that "Karen" referring to Karen
6	MR. BULIOX: I'll object. Same objection	6	Becker? Is that right?
7	as before.	7	A Yes.
8	A As far as I recall, no. I -- I've had many, many,	8	Q The last sentence of paragraph 1 says, on June 29th
9	many CBLs over the years, but not specifically on	9	and 30th she was in -- I'm sorry.
10	filling out paperwork.	10	"Robin and I both sat down with Marlo and
11	BY MS. VANCE:	11	explained that due to the excessive occurrences
12	Q Has an employee ever talked to you as a member of	12	between both absences and incomplete shifts we were
13	salaried management about needing a reasonable	13	ending her employment with us and proceeded with the
14	accommodation from Wal-Mart?	14	Gain."
15	A No.	15	What is the Gain referred to there?
16	MR. BULIOX: Same objection. I'm going	16	A That's what it is called on the computer, to
17	to make a standing objection.	17	terminate an associate. You pull it up and then it
18	BY MS. VANCE:	18	has all their information and everything that you
19	Q If an employee tomorrow at work or the next time you	19	have to fill out.
20	are at work came to you and said, "I need to request	20	Q Did Gain stand for something? Is it an acronym?
21	a reasonable accommodation, what should I do," what	21	A Not that I know of.
22	would be your answer?	22	Q Do you have any idea why it is called Gain?
23	A I would refer them to the store manager.	23	A I don't know.
24	Q And have you ever seen any of the paperwork that an	24	Q Is there something special that you as an assistant
25	employee would need to fill out to request a	25	manager do in order to access Gain?
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1	reasonable accommodation?	1	A You have to go onto the computer and access the Gain
2	A No.	2	app, I guess you would call it. And then you go in
3	Q And so it sounds like you've never participated in	3	and put their name in, and it pulls up all -- you
4	the process where an employee under your management	4	know, their address and everything, and you type in
5	purview has received a reasonable accommodation from	5	there the reason for the termination.
6	Wal-Mart.	6	Q What else? What other information do you input in
7	A I don't make the decision on that. That has to be	7	the Gain?
8	the store manager or someone from the market. It is	8	A You put if they are eligible for rehire, if you would
9	higher up than me, so I just refer them to the store	9	rehire them. Just comments. If they turned in like
10	manager, and then they decide -- or if he has to go	10	their vest and their main badge.
11	higher, depending on what the accommodation is.	11	Q On July 10, 2015, what did you input into the Gain
12	Q If somebody who is under your management purview	12	after your meeting with Marlo Spaeth?
13	has a reasonable accommodation in place, how are	13	A I don't recall what I put in. I'm sure I put in
14	you -- or, are you made aware of the accommodation	14	because of the occurrences, yeah, that we were
15	somehow?	15	terminating her for attendance.
16	A Yes.	16	Q Do you recall what you marked as far as eligibility
17	Q How?	17	to be rehired for Marlo Spaeth on July 10, 2015?
18	A Yes. Either Kent would tell us or Karen would have	18	A I would most likely have put that she is eligible for
19	that. She would let us know, because they would have	19	rehire.
20	to put it in their file. And she would let us know,	20	Q Why do you say that that's the most likely thing that
21	you know, that this person needs to sit down every so	21	you would have done?
22	often or whatever.	22	A Just because the majority of the terminations I've
23	Q And is that information conveyed to you in writing or	23	done, they are eligible for rehire. Attendance is
24	in a spoken conversation?	24	one thing that is something that a person can fix.
25	A In a spoken conversation.	25	You know, it is not something terrible, that they

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<p>1 Q Is there any minimum at Wal-Mart required? Any</p> <p>2 minimum requirement for how many associates ought to</p> <p>3 be in a department at any time?</p> <p>4 A No.</p> <p>5 Q And in that first half of 2015, was the department</p> <p>6 manager position for domestics a full-time position?</p> <p>7 A All department manager positions are full-time.</p> <p>8 Q And are they -- Are department managers always</p> <p>9 covering day shift?</p> <p>10 A Yes, mostly, unless they choose to come in to work</p> <p>11 with an associate on the weekend or overnight. Or on</p> <p>12 the evening shift.</p> <p>13 Q In that first half of 2015, did the domestics</p> <p>14 department have more than one department manager?</p> <p>15 A That I don't recall, because it went from -- at one</p> <p>16 point there were three between all of them and then</p> <p>17 it went to two. So...</p> <p>18 Q Do you recall whether there were two at the first</p> <p>19 half of 2015?</p> <p>20 A There would have been at least one for domestics and</p> <p>21 one for housewares.</p> <p>22 Q And can a department manager from housewares cover</p> <p>23 the domestics department if the department manager</p> <p>24 from domestics is not working?</p> <p>25 A Yes.</p>	<p>1 applications in any way when you are reviewing them?</p> <p>2 A No. They all pop up in the screen together. The</p> <p>3 rehires fill out an application just like everyone</p> <p>4 else does. The only difference is on theirs it says</p> <p>5 "have you ever worked for Wal-Mart before" and they</p> <p>6 put the dates that they worked there.</p> <p>7 Q Is there anything about the system -- Let me back up</p> <p>8 on that. The date range that they worked at Wal-Mart</p> <p>9 is what they would put on the application?</p> <p>10 A Yes.</p> <p>11 Q Okay. As opposed to the days of the week. They are</p> <p>12 actually telling you the time frame?</p> <p>13 A Right. Like I worked there in 2010 to April or June</p> <p>14 or something.</p> <p>15 Q Does the system flag somebody who has worked at</p> <p>16 Wal-Mart versus an applicant who has never worked at</p> <p>17 Wal-Mart --</p> <p>18 A No, no.</p> <p>19 Q -- in any way?</p> <p>20 How long do you think it would take --</p> <p>21 I'm sorry.</p> <p>22 How long do you estimate it would take to</p> <p>23 fill out an application in 2015?</p> <p>24 A Maybe a half hour to an hour. It is done on a</p> <p>25 computer so, you know, however proficient you are on</p>
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<p>1 Q And what's the name of the department that Marlo</p> <p>2 Spaeth worked in?</p> <p>3 A It was -- Well, she was mostly in domestics and</p> <p>4 housewares.</p> <p>5 Q And I think your testimony is that you thought there</p> <p>6 was probably one more associate. Do you know whether</p> <p>7 the other associate would have been full-time or</p> <p>8 part-time?</p> <p>9 A Part-time.</p> <p>10 Q In 2014 did you have any role in scheduling?</p> <p>11 A Yes.</p> <p>12 Q Did you have any role in receiving applications for</p> <p>13 employment?</p> <p>14 A Yes.</p> <p>15 Q And what is your role in the application for</p> <p>16 employment process?</p> <p>17 A If we have a position open, then I would review the</p> <p>18 applicants and choose ones that I would like to</p> <p>19 interview.</p> <p>20 Q And in that capacity, do you also review candidates</p> <p>21 who are trying to get rehired by Wal-Mart?</p> <p>22 A Yes. They would have to fill out an application just</p> <p>23 like anyone else.</p> <p>24 Q If you are reviewing applications, do you separate</p> <p>25 rehire applications from first-time employment</p>	<p>1 a computer.</p> <p>2 Q Can it be done from any computer with an internet</p> <p>3 connection or does it have to be done at Wal-Mart?</p> <p>4 A No, it can be done from anywhere.</p> <p>5 (Exhibit 25 marked for identification.)</p> <p>6 Q All right. I am handing you what's been marked as</p> <p>7 Exhibit 25. Ms. Stern, what is this document?</p> <p>8 A A series of emails that I sent about Marlo's</p> <p>9 attendance.</p> <p>10 Q Now I'll direct your attention to the second page.</p> <p>11 So this email titled "Marlo" you sent on January 13,</p> <p>12 2015, to Robin Castro, Bonnie Popp, and Jason Radue;</p> <p>13 is that correct?</p> <p>14 A Yes.</p> <p>15 Q Is there anyone else besides those three people who</p> <p>16 are above you in your chain of command --</p> <p>17 A No.</p> <p>18 Q -- in the store?</p> <p>19 I suppose there's probably a Walton</p> <p>20 higher up your chain of command.</p> <p>21 But in the store it is those three</p> <p>22 people, correct?</p> <p>23 A Yes.</p> <p>24 Q And then in the email you go on to relay some</p> <p>25 information from the meeting that would have been</p>

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1	three weeks ago. Is that right?	1	A It could have been.
2	A Yes.	2	Q So now I'm asking you why couldn't Marlo just work
3	Q Okay. And you say you did a coaching for attendance.	3	noon to 4 like she used to?
4	Just to make sure all the documents are	4	A Because the system generated the schedule according
5	lining up -- That's Exhibit 20, correct?	5	to the traffic of the customers, and it generated
6	A Yes.	6	shifts from 1 to 5:30, so that was the shift that was
7	Q And let's see. In the middle I see that it says,	7	available for her. That was the shift she was
8	"She wanted to know why she can't just work noon to	8	available for; that's why she got those shifts.
9	4, like she used to."	9	There was no 12-to-4 shift generated anymore.
10	Do you see where I'm reading?	10	Q When did the system -- When you say "anymore," when
11	A Yes.	11	did the system switch from having the possibility of
12	Q What do you recall Marlo saying that prompted you to	12	having a noon-to-4 shift to not having that shift
13	write that?	13	anymore?
14	A That she just wished she could work noon to 4, like	14	A Like right around -- Before like Thanksgiving'ish, I
15	she used to.	15	guess.
16	Q And when did Marlo say that to you?	16	Q Of November of 2014?
17	A Whenever I would talk to her about her attendance.	17	A Yeah. Because it goes according to the customers
18	Q How often was that in this December 2014 to January	18	coming into the store. So, you know, a bit with the
19	2015 time frame?	19	holiday season and getting busier, it generates
20	A I'm not sure how many times. I mean we documented	20	different shifts. It doesn't always generate the
21	the coaching and when we talked to her on	21	same shift, other than a department manager.
22	December 17th.	22	Q I don't understand what you mean when you say, "it
23	Q So is it fair to say that more than three times	23	doesn't always generate the same shift, other than a
24	Marlo said something to the effect of wanting to know	24	department manager."
25	why she just -- or, can't just work noon to 4, like	25	A Department managers always work the same shift from
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1	she used to?	1	day to day. The rest of the sales force, the
2	A Possibly, yes.	2	associates and the cashiers and everyone else in the
3	Q Do you think it would be more than three times that	3	store, it goes according to the customer traffic.
4	she would have expressed a sentiment like that to	4	So if it is busy at noon, it will
5	you?	5	generate shifts at noon; if it is busy at suppertime,
6	A I don't remember. I don't know how many times. I	6	it generates them at suppertime. And then it looks
7	know it was whenever I talked to her about	7	at, you know, the coverage with the department
8	attendance.	8	managers. It looks at all of the coverage during the
9	Q And it sounds like you had documented a personal	9	day and then it fills in the shifts to cover for the
10	discussion. Right?	10	customer flow.
11	A Um-hum.	11	Q Does this happen every year for holidays?
12	Q From December 17, 2014, right, on Exhibit 21? Is	12	I'm trying to understand why the
13	that right?	13	possibility of a noon-to-4 shift wasn't a possibility
14	A Right.	14	anymore.
15	Q You think during that personal discussion she asked	15	A Well, the company looks at the system all the time
16	you a question to the effect of: Why can't I just	16	and makes updates to it so, you know, it changes all
17	work noon to 4, like I used to?	17	the time. Like now we're on a completely different
18	A She may have.	18	scheduling system than what we were then. The
19	Q It sounds like it was something that she asked	19	majority of it is based off of the customer traffic,
20	you -- Well, I think you said three times. Do you	20	so it looks at how many customers we have each hour
21	think it probably was more than three times?	21	and that's how it generates shifts.
22	A I don't know.	22	Q And it sounds like in November of 2014 the system
23	Q But it sounds like it wasn't less than three times.	23	wasn't going to generate a noon-to-4 shift for
24	Maybe it was at least three separate occasions where	24	Marlo Spaeth anymore --
25	she asked you this?	25	A Right.

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1	Q -- because of customer traffic. Is that right?	1	A It could.
2	A Correct.	2	Q And to your knowledge, how long has scheduling been
3	Q What about November 2013, like the holiday, the rush	3	based in part on an analysis of customer traffic?
4	before then?	4	A The entire time that I have been there. It has
5	A I don't know. I wouldn't know.	5	always been computer-based scheduling.
6	Q This periodic change or update in the scheduling	6	Q And that's since 1990 without interruption; is that
7	system, did it happen before 2014 or was 2014 the	7	correct?
8	first time that you saw a change in what shifts you	8	A Yes.
9	could schedule?	9	Q I'll direct your attention back to Exhibit 25. And,
10	A Like I said, I was on nights for part of 2014. So,	10	oh, about six lines down I read, "Karen and I also
11	you know, the shifts change all the time and then it	11	checked her file and availability. She has nothing
12	fills in whoever is available during those hours.	12	on file restricting work hours and is available
13	That's who gets assigned the shifts.	13	until 6 p.m."
14	Q Was that true in 2013, the way it was in 2014?	14	So I'm going to ask, that "Karen" that
15	A I would think so, yes.	15	you are referring to is Karen Becker, correct?
16	Q So you've been at Wal-Mart since 1990. Was the	16	A Yes.
17	scheduling system this way, where there's periodic	17	Q And so when you write that, it was that you and Karen
18	changes according to customer flow, ever since 1990?	18	went together to check Marlo's file; is that right?
19	A Yes, it is always changing.	19	A Yes, she pulled the file, and we looked at it
20	Q And in your past experience scheduling days as an	20	together to see if she had any medical restrictions
21	assistant manager, have you ever seen other seasons	21	on time for her to eat.
22	or other times when the system would no longer	22	Q And what did you find?
23	generate a noon-to-4 schedule?	23	A There was nothing in there.
24	A I can't answer that, because I don't know how many	24	Q Okay. And then did you find her scheduling
25	noon-to-4 schedules it would have generated. It	25	availability form?
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1	could have four cashiers, too. I don't know.	1	A That's on the computer.
2	The only schedule I would look at was the	2	Q So her scheduling availability form --
3	area I was over. And it was put in those -- whatever	3	A I wouldn't have looked at the form in there, because
4	shifts were available, and then assign whoever is	4	we go off of what's on the computer. So whatever was
5	available to those shifts.	5	in there was what -- the shifts that she would be
6	Q Any reason to believe that November of 2014 would	6	available for. So she was available from noon until
7	have been the first time since 1990 that the system	7	6, in the computer system.
8	would not have been able to generate a noon-to-4	8	Q In the computer. So when you say "I checked in
9	schedule for Marlo Spaeth?	9	there," you mean in the computer system?
10	A If that was the time that the customer traffic	10	A Yes.
11	dictated someone to be there, it would have generated	11	Q Okay. And this document, Exhibit 22, that was
12	the shift for that time. It wouldn't just generate a	12	physically signed, the actual paper with the
13	specific shift for Marlo or anyone else.	13	signature is in the personnel file, correct?
14	Q And then do you -- But it sounds like you don't have	14	A Yes.
15	any specific knowledge of any day-shift employees who	15	Q Okay. And so when you were looking with Karen in
16	worked a noon-to-4 day shift when you were in charge	16	Marlo's personnel file, are you testifying that you
17	of day shifts, before this 2014 situation.	17	did not see the scheduling availability form that is
18	A No, no.	18	marked as Exhibit 22?
19	Q Okay. "No" is the answer?	19	A I didn't look for those at all. We just looked to
20	A No.	20	see if she had anything in the medical part that said
21	Q Okay. Can you predict? Is there like a set time	21	she needed to eat at a certain time.
22	frame when the scheduling system changes what shifts	22	Q Okay. So this paper -- The piece of paper existed in
23	are available?	23	the file you were looking at, correct?
24	A No. It changes it all the time.	24	A Correct.
25	Q It could change it from week to week?	25	Q And it is not where you were looking, it sounds like.

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<p>1 someone's schedule when there is a business need.</p> <p>2 Like you gave the example of Black Friday. What do</p> <p>3 you do as a manager to change the time somebody is</p> <p>4 scheduled?</p> <p>5 A That's where we talk to each associate to see who</p> <p>6 could come in during the sale time that we needed,</p> <p>7 and then we could go in and adjust the shift times</p> <p>8 for that sale period.</p> <p>9 Q And physically what do you do to adjust the time for</p> <p>10 the period?</p> <p>11 A You highlight that shift and then you would hit</p> <p>12 whichever F key it was to adjust the time frame.</p> <p>13 Q So does it take like three keys to change --</p> <p>14 A I don't know.</p> <p>15 Q -- from 12 to 11?</p> <p>16 A Maybe.</p> <p>17 Q And then if you wanted to change a 5:30 end time to</p> <p>18 4, you would have to hit one of the F -- like one of</p> <p>19 the function keys and then --</p> <p>20 A Change the time.</p> <p>21 Q -- type in the new time. So maybe four key strokes.</p> <p>22 And the schedules show up a week at a</p> <p>23 time, correct?</p> <p>24 A Yes.</p> <p>25 Q Okay. How long do you think it would have taken you</p>	<p>1 Q And I would ask you, do you think you've ever had a</p> <p>2 computer-based learning course on reasonable</p> <p>3 accommodations that would have mentioned a modified</p> <p>4 schedule as a possible accommodation?</p> <p>5 A No, I don't think so.</p> <p>6 Q And I'm trying to remember your testimony from this</p> <p>7 morning. I'm just blanking. Do you have a memory of</p> <p>8 taking a computer-based learning course at Wal-Mart</p> <p>9 that addressed reasonable accommodations in</p> <p>10 employment?</p> <p>11 A I had taken a lot of CBLs over the years, and I'm</p> <p>12 sure somewhere along the line there was something</p> <p>13 about it, but...</p> <p>14 Q It sounds like you don't have a specific memory. But</p> <p>15 you know that you've probably had more than 100 CBLs</p> <p>16 in the last decade, correct?</p> <p>17 A Probably.</p> <p>18 Q Can you estimate for me how many computer-based</p> <p>19 learning courses you take over the year as an</p> <p>20 assistant manager?</p> <p>21 A It varies from year to year. It depends. If we have</p> <p>22 to update our food licenses, there's more than</p> <p>23 normal. So it varies every year.</p> <p>24 Q Since you have become a member of salaried</p> <p>25 management, do you think you have taken more than</p>
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<p>1 to change Marlo Spaeth's schedule to shifts that were</p> <p>2 12:30 to 4, if you wanted to?</p> <p>3 MR. BULIOX: Objection. It misstates the</p> <p>4 testimony and mischaracterizes what was just</p> <p>5 testified to about business needs, as a personal</p> <p>6 want.</p> <p>7 Subject to that, go ahead and answer the</p> <p>8 question.</p> <p>9 BY MS. VANCE:</p> <p>10 Q Let me restate the question. If you were directed by</p> <p>11 somebody up your chain of command to change Marlo's</p> <p>12 schedule to make sure that she worked a schedule that</p> <p>13 reflects only the availability in Exhibit 22, how</p> <p>14 long would that have taken you in November of 2014?</p> <p>15 A That would have only taken a couple of minutes.</p> <p>16 Q For the week?</p> <p>17 A Yes.</p> <p>18 Q And in your experience since you became a member of</p> <p>19 salaried management, have you ever managed an</p> <p>20 employee of Wal-Mart who had a reasonable</p> <p>21 accommodation on their schedule?</p> <p>22 A No.</p> <p>23 MR. BULIOX: Again, my objection to</p> <p>24 "reasonable accommodation" from earlier stands.</p> <p>25 BY MS. VANCE:</p>	<p>1 200 CBLs?</p> <p>2 A I couldn't tell you how many. I honestly couldn't.</p> <p>3 Q But would you agree with me that it is more than 100?</p> <p>4 A Most likely, yes.</p> <p>5 Q Have you ever seen the list of your trainings? Is</p> <p>6 there one maintained in your personnel file?</p> <p>7 A There would be on the CBL computer, of what we did on</p> <p>8 there. Before that we had microfiche, so there's no</p> <p>9 list of that.</p> <p>10 Q When did you switch from microfiche to the computer</p> <p>11 tracked system?</p> <p>12 A Yeah.</p> <p>13 Q Do you know when you switched away from microfiche?</p> <p>14 A No, it was -- No. It was in the beginning of my</p> <p>15 salaried career, somewhere around there.</p> <p>16 Q Last millennium?</p> <p>17 A Yeah.</p> <p>18 Q Or, no. It would be maybe after 2000, if it was the</p> <p>19 beginning of your salaried management career. Like</p> <p>20 2002. Okay.</p> <p>21 Do you know whether a list of your CBL</p> <p>22 trainings is maintained in your paper personnel file?</p> <p>23 A That I don't know. My file is at the home office; it</p> <p>24 is not in the store. So I don't know what they all</p> <p>25 have in there.</p>

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1	A	No.	1	A	No, no.
2	Q	And I bet a co-manager could. Is that right?	2	Q	Okay. So then let's look on our second page. I'm
3	A	Yes.	3		looking at March -- the top entry, March 12, 2007.
4	Q	When I look at that code key on the last page, I also	4		It looks like the associate left early, at 3:49, and
5		see authorized incomplete shift non-FMLA as 58.	5		it was coded as a 63. Is that right?
6	A	Yeah. I think one is for coming in late and the	6	A	Yes.
7		other one is for leaving early.	7	Q	So that would be an example where the associate is
8	Q	Okay. And then I see 56 is authorized absence	8		not working their complete shift -- or, I guess, in
9		non-FMLA. What is the difference between authorized	9		this case Marlo Spaeth didn't work her complete
10		absence and authorized incomplete shift?	10		shift, but her manager made sure it was in the system
11	A	Because an absence would be their entire shift, and	11		coded as authorized. Correct?
12		an incomplete would be that they were there part of	12	A	I am guessing so, yes.
13		their shift.	13	Q	And how -- At what point in time do these things get
14	Q	And what is a 51? Incomplete shift occur?	14		coded?
15	A	I think that's for more than 50 percent of their	15	A	Usually, within a couple of days. I mean if the
16		shift. So it counts as an entire -- like an absence	16		manager is off, it will get coded the next time they
17		for the whole day.	17		work.
18	Q	All right. And those double asterisks, is that if a	18		MR. BULIOX: Just as a standing objection
19		market human resources manager approves an incomplete	19		to form and to the extent it calls for speculation,
20		shift?	20		as it concerns actions that weren't taken by
21	A	Yes.	21		Ms. Stern or that Ms. Stern was otherwise involved
22	Q	So that would have been Lee Spude authorizing an	22		in.
23		incomplete shift; is that correct?	23		Subject to that, you can go ahead and
24	A	Yes.	24		answer the questions, if you can.
25	Q	Okay. And then I see 54 is a business need	25	BY MS. VANCE:	
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1		incomplete shift. What does that mean?	1	Q	So as part of your job as the assistant manager, are
2	A	That's like, say, you have a department manager that	2		you entering codes like this pretty much every day
3		gets sick and then someone else comes in to fill in	3		for the employees under your management purview?
4		for them.	4	A	Yes. When we are on the system, yes.
5		Or a business need is like if someone had	5	Q	And what system do you go into to do that?
6		to go to the academy. They are going to show up as	6	A	This was in the Smart System.
7		not being at the store for their shift. So that	7	Q	And is there any kind of list that the Smart System
8		would be a business need there. They are actually on	8		generates of, hey, these are all the employees who
9		the clock getting paid for their time, but they are	9		needed codes for their time?
10		at another store working, or academy school or	10	A	They would all show up, and you go in and do the ones
11		whatever it is that they are doing.	11		that were under you.
12	Q	All right. If an associate has completed most of the	12	Q	And how often does that happen?
13		work in their department and there's not really any	13		MR. BULIOX: Objection as to time.
14		customers around, and the manager thinks why don't I	14	A	It would be on a daily basis. You know, you have so
15		just send this person home -- First of all, can a	15		many people under you each day. You know, there's
16		Wal-Mart manager do that?	16		always somebody calling in or coming in late or
17	A	Yes.	17		leaving early. You know, it is a constant thing, so
18	Q	And then how is that decision coded?	18		every time that you work you go in and code all your
19	A	That would be an approved incomplete shift.	19		absences.
20	Q	What would be the code?	20	BY MS. VANCE:	
21	A	I haven't done these codes in a long time. That	21	Q	Okay. I'm turning to our third page. I'm going to
22		would be like a 62 -- or, a 63.	22		count and see if you get the same count. I'm going
23	Q	All right. But if you sent somebody home early	23		to count 63s. 11. I count 11 authorized incomplete
24		because the shop is -- the store is really slow,	24		shifts non-FMLA on page 3. Do you agree with me?
25		that's not called business need, early departure?	25	A	That's what I count.

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1	the Smart System and coded the associate left early, exception as authorized. Correct?	1	at that time, right?
2		2 A	Yes.
3 A	Yes.	3 Q	And when do you think you stopped using this system?
4 Q	And in some cases the manager making that 63 authorization on this page would have been you at some point, correct?	4 A	I don't know. A couple of years ago.
5		5 Q	Okay. In November -- So on this page that covers November 2014 through February 2015, this is when you have a memory of being the assistant manager managing Marlo Spaeth, correct?
6		6	
7 A	I don't remember when I came to days. I don't know what month it was.	7	
8		8	
9 Q	Can you remind me for code 60, incomplete shift occur, what -- what that means and how it is different than 51?	9 A	Yes.
10		10 Q	And does that mean that these codes all came from you --
11		11	
12 A	I don't know.	12 A	Yes.
13 Q	Because 51 looks like it stands for incomplete shift occur, correct?	13 Q	-- on this page?
14		14	Okay. Is it possible that anybody else gave those codes?
15 A	That's what it looks like.	15	
16 Q	But 60 also is called incomplete shift occur. They are both 50 and 61. You wouldn't code that unless there was an unauthorized --	16 A	If I was off for some reason. I would say no, because we aren't off any of those -- during those months.
17		17	
18		18	
19 A	I think the 51 was coming in late and 60 is leaving early.	19 Q	Sorry. That's funny. Do you remember what -- So let's take this one at a time. So business need incomplete shift is the designation for the first 11 early departures of Marlo on this page, right?
20		20	
21 Q	I see. Okay. And for both situations there, unauthorized by management; is that correct?	21	
22		22	
23 A	Yes.	23 A	Yes.
24 Q	51 and 60?	24 Q	Do you remember what the business need incomplete shift was that prompted you to enter 61?
25 A	Yes.	25	
Page 127		Page 129	
1 Q	And for both the code 51 and the code 60, the associate is credited with an absence as far as their attendance record; is that correct?	1 A	That was when we were adjusting to the new scheduling system.
2		2	
3		3 Q	And so what was the business need?
4 A	For every three.	4 A	So for them -- We put it in as a business need when we were helping them adjust to the new scheduling system.
5 Q	For every three?	5	
6 A	Every three incomplete shifts counts as one absence.	6	
7 Q	And was there some difference between whether an associate leaving early was more than 50 percent of their scheduled time or not?	7 Q	And when you say "them," who do you mean?
8		8 A	All of the associates.
9		9 Q	"All of the associates." Okay. So was there some kind of instruction to you that for a certain period of time you would code early departures as 61, business need incomplete shift?
10 A	More than 50 percent counts as an entire absence.	10	
11 Q	And so how would that -- If it was unauthorized, how would that be coded?	11	
12		12	
13 A	I don't know.	13 A	I'm sure there was.
14 Q	Because I thought you had testified previously that you would use 51 under the absence occurred title if the associate was gone more than 50 percent of their shift, and it would be credited as an absence. Is that not right?	14 Q	And where would that have come from?
15		15 A	Most likely from Lee.
16		16 Q	From your market human resources manager?
17		17 A	Yeah.
18		18 Q	Okay. Do you remember if there was a time frame given to you in the instruction?
19 A	I -- I don't know. It has been a long time since we did these.	19	
20		20 A	I don't remember.
21 Q	And you printed this out on March 18, 2015. You weren't printing out an old document. You were printing out a current document, correct?	21 Q	Let's see. The last one is December 3rd, 2014?
22		22 A	Right.
23		23 Q	Yes. Let's see. We see our first scheduling until 5:30 on November 24. So it looks like -- Strike that.
24 A	Yes.	24	
25 Q	Like that was -- This is the system that was in place	25	

<p style="text-align: right;">Page 130</p> <p>1 It looks like starting December 8, 2014,</p> <p>2 you switched to coding Marlo's early departures,</p> <p>3 instead of with the business need designation, with</p> <p>4 the incomplete shift occurrence designation of 60.</p> <p>5 Is that correct?</p> <p>6 A Yes.</p> <p>7 Q So then let's go back to that piece. Did you have a</p> <p>8 conversation with Marlo Spaeth about how you were</p> <p>9 coding her early departures in that time frame of</p> <p>10 early December 2014?</p> <p>11 A Not that I recall, until this -- the 17th.</p> <p>12 Q So you can't -- I want to see if you remember. If</p> <p>13 you code her as a 60, your testimony is that the 60s</p> <p>14 that started in that December 8, 2014 time frame were</p> <p>15 not counted as absences. It would have been three</p> <p>16 60s to count as one absence; is that correct?</p> <p>17 A Yes.</p> <p>18 Q And this chart would not show at any time Marlo</p> <p>19 Spaeth worked an entire shift; is that correct?</p> <p>20 A Right.</p> <p>21 Q Did you ever have any conversation with a former</p> <p>22 manager of Marlo Spaeth about why or when they would</p> <p>23 choose a designation or how they would choose a</p> <p>24 designation for Marlo's time when she left early?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 132</p> <p>1 A Um-hum.</p> <p>2 Q Am I right that Marlo was scheduled to work from noon</p> <p>3 to 4 p.m. on February 13, 2015?</p> <p>4 A Yes.</p> <p>5 Q And it looks like she clocked out 12 minutes early;</p> <p>6 is that correct?</p> <p>7 A Yes.</p> <p>8 Q And you marked her as incomplete shift occur, with a</p> <p>9 60, right?</p> <p>10 A Yes.</p> <p>11 Q How was Marlo scheduled 12 noon to 4 on February 13,</p> <p>12 2015?</p> <p>13 A The system probably generated a schedule for her for</p> <p>14 that shift.</p> <p>15 Q To your understanding, why would it have scheduled a</p> <p>16 12-to-4 shift for her on one day, when on other dates</p> <p>17 she had 2 p.m. to 5? Is that right? 1 p.m.?</p> <p>18 A 1 p.m. to 5:30.</p> <p>19 Q To 5:30 shift.</p> <p>20 A I don't know. I could speculate that it is the day</p> <p>21 before Valentine's and that maybe it added extra</p> <p>22 shifts for coverage.</p> <p>23 Q And you might have done that, it sounds like, then?</p> <p>24 A No.</p> <p>25 Q Would that be correct?</p>
<p style="text-align: right;">Page 131</p> <p>1 Q And when you used this document in your meeting with</p> <p>2 Marlo on March 18, 2015, did you look through the</p> <p>3 history of it?</p> <p>4 A No. I would only have focused on the last part of</p> <p>5 it.</p> <p>6 Q Why did you print out a report that went all the way</p> <p>7 back to 2006?</p> <p>8 A Because I just printed the whole thing.</p> <p>9 Q Sounds like you didn't put any time frame on the</p> <p>10 attendance report when you printed it out. Is that</p> <p>11 right?</p> <p>12 A Right. I just printed the entire thing.</p> <p>13 Q And it give you the last nine-plus years, it looks</p> <p>14 like.</p> <p>15 So if Marlo started in 1999, do you know</p> <p>16 whether there was any computerized attendance</p> <p>17 tracking of her work before July 11, 2006?</p> <p>18 A I would not know that.</p> <p>19 Q Have you ever pulled your own attendance tracking</p> <p>20 maintenance report?</p> <p>21 A I don't clock in and out, so I don't have one.</p> <p>22 Q I would like to direct your attention to the</p> <p>23 February 13, 2015 entry on this report. I think it</p> <p>24 is actually the last entry on the report. Do you see</p> <p>25 where I'm pointing?</p>	<p style="text-align: right;">Page 133</p> <p>1 A No.</p> <p>2 Q The computer generated --</p> <p>3 A Yeah. Other than for the Black Friday event or a</p> <p>4 specific event, we didn't adjust.</p> <p>5 Q But isn't the day before Valentine's Day a specific</p> <p>6 event?</p> <p>7 A No. It is just a holiday. It was not a specific</p> <p>8 shopping event.</p> <p>9 Q Okay. So you don't think it means that on</p> <p>10 February 13, 2015, there was low customer traffic and</p> <p>11 so it was okay for Marlo to leave at 4; is that</p> <p>12 right?</p> <p>13 A I don't know. I'm guessing that maybe it just added</p> <p>14 extra shifts in.</p> <p>15 Q It was the opposite?</p> <p>16 A Yeah.</p> <p>17 Q They expected more customer traffic, so they put</p> <p>18 Marlo in for an extra shift basically; is that right?</p> <p>19 A Yes.</p> <p>20 Q Do you know whether Marlo was in the system as</p> <p>21 somebody who could be pulled in to secondary for any</p> <p>22 other department?</p> <p>23 A I don't know that she was secondary. There were only</p> <p>24 a few that were, and that was usually to help cover</p> <p>25 mainly the service areas, like the paint desk or the</p>

<p style="text-align: right;">Page 154</p> <p>1 A No. If she would have changed her availability to</p> <p>2 12 to 3, she would not have been scheduled anything,</p> <p>3 because the system had the shift in there for 1 to</p> <p>4 5:30.</p> <p>5 So someone else that would have been</p> <p>6 available from 1 to 5:30 would have been eligible for</p> <p>7 that shift. Marlo wouldn't have gotten a shift at</p> <p>8 all.</p> <p>9 Q There is no way that Marlo would have been scheduled</p> <p>10 by the computer if she had an availability less than</p> <p>11 1 to 5:30; is that right?</p> <p>12 A Right.</p> <p>13 Q If you had been directed to modify Marlo's schedule</p> <p>14 as a reasonable accommodation that had been approved</p> <p>15 by headquarters, and the modified schedule was this</p> <p>16 hypothetical noon-to-3 time frame, would you have</p> <p>17 found other associates in the store that would have</p> <p>18 worked after 3 in Marlo's department?</p> <p>19 A Yes.</p> <p>20 MS. VANCE: I have no further questions</p> <p>21 for this witness at this time. I tender the witness,</p> <p>22 as Emery says.</p> <p>23 MR. BULIOX: I have got to use that</p> <p>24 sometime.</p> <p>25 All right. I just have a few questions.</p>	<p style="text-align: right;">Page 156</p> <p>1 about an employee who had a disability or claimed a</p> <p>2 disability or a question about the ADA or a question</p> <p>3 about reasonable accommodations or needed information</p> <p>4 on those things, how would you go about getting that</p> <p>5 information?</p> <p>6 A We can look them up on The Wire. All the associates</p> <p>7 can look them up.</p> <p>8 Q And what's The Wire?</p> <p>9 A The Wire is Wal-Mart's web page, if you want to say,</p> <p>10 like where they have all their information. All the</p> <p>11 policies and things that are going on, their monthly</p> <p>12 calendars of events, and all the information is on</p> <p>13 The Wire.</p> <p>14 Q Is it like an internal email -- Not "email."</p> <p>15 Internet system?</p> <p>16 A Yes.</p> <p>17 Q So you testified earlier that in response to Marlo</p> <p>18 Spaeth's saying that she would get sick if she didn't</p> <p>19 eat at a certain time -- Do you recall testifying</p> <p>20 about that?</p> <p>21 A Yes.</p> <p>22 Q Okay. And in response to that, did you propose any</p> <p>23 other option for Marlo?</p> <p>24 A She could take a break at any time to eat when she</p> <p>25 felt it was necessary.</p>
<p style="text-align: right;">Page 155</p> <p>1 MS. VANCE: Do you want to take a break</p> <p>2 and organize?</p> <p>3 MR. BULIOX: Yeah.</p> <p>4 MS. VANCE: Let's go off the record.</p> <p>5 (A break was taken from 3:54 to 4:03.)</p> <p>6 EXAMINATION</p> <p>7 BY MR. BULIOX:</p> <p>8 Q Ms. Stern, I just have a few follow-up questions for</p> <p>9 you, the first question of which is: You testified</p> <p>10 earlier about policies and practices with respect to</p> <p>11 accommodations, correct?</p> <p>12 A Yes.</p> <p>13 Q Okay. Do you know whether or not Wal-Mart has</p> <p>14 policies in effect regarding the Americans with</p> <p>15 Disability Act and accommodations for disabilities?</p> <p>16 A Yes.</p> <p>17 Q Okay. And when I say Americans with Disability Act,</p> <p>18 I'm going to refer to that as ADA. Is that fair?</p> <p>19 A That's fair.</p> <p>20 Q All right. And were those policies in effect during</p> <p>21 2015?</p> <p>22 A Yes.</p> <p>23 Q Okay. And do you have access to those policies?</p> <p>24 A Yes.</p> <p>25 Q And if you had a question about, you know, an issue</p>	<p style="text-align: right;">Page 157</p> <p>1 Q Could she have taken her break at 4 o'clock p.m.?</p> <p>2 A Yes.</p> <p>3 Q 4:30 p.m.?</p> <p>4 A Yes.</p> <p>5 Q 5:00 p.m.?</p> <p>6 A Yes.</p> <p>7 Q 5:30 p.m.?</p> <p>8 A 5:30 would have been the end of her shift, but</p> <p>9 15 minutes prior, yes.</p> <p>10 Q 5:15. Okay.</p> <p>11 And from your experience, was Marlo</p> <p>12 Spaeth able to adapt to change?</p> <p>13 A Yes.</p> <p>14 Q Okay. Do you have any examples of that?</p> <p>15 A When I first started supervising her, she basically</p> <p>16 would just fold towels. I took her through the</p> <p>17 housewares department and showed her how to zone,</p> <p>18 which is straightening everything on the shelves, and</p> <p>19 putting away returns from the service desk.</p> <p>20 Q And was she able to do that?</p> <p>21 A She was able to do that. She started doing it on a</p> <p>22 daily basis.</p> <p>23 Q If you could pull up Exhibit No. 30. These are your</p> <p>24 interview notes from the EEOC interview that you did,</p> <p>25 that you testified to earlier, correct?</p>